

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 315 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMANLAL ATMARAM & CO.

Versus

JAYANTILAL LAXMANDAS SONI

Appearance:

1. Civil Revision Application No. 315 of 2003
MR MB GANDHI for Petitioner No. 1
MS RUMI M GANDHI for Petitioner No. 1
MR CL SONI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/03/2004

ORAL JUDGEMENT

The petitioner is the original defendant, against whom the respondent herein filed a suit, being H.R.P.Suit

No.207 of 1997, in the Small Causes Court at Ahmedabad. The case of the plaintiff is that the plaintiff is the owner of the suit property. The suit premises is situated in Jamalpur area in the city of Ahmedabad. The case of the plaintiff is that the defendant is not using the suit premises since 1981 and that the premises is kept closed. It is also the case of the plaintiff that the defendant has changed the user of the said property as the original premises was rented for residential purpose but now the defendant is using the same for washing and refining silver and gold. The aforesaid suit is filed by the plaintiff on the ground of change of user and for not using the suit property since 1981. The plaintiff also prayed for a decree for possession on the ground of his bona fide personal requirement, as, according to the plaintiff, he is having 10 family members and the premises of the plaintiff is not sufficient to accommodate all of them. The petitioner-tenant also instituted H.R.P.Suit No.1312 of 1997 for permanent injunction. The Trial Court heard both the suits together and disposed of the said suits by a common judgement and came to the conclusion that the respondent-plaintiff has proved his case of non-user of the premises. The Trial Court also found that the plaintiff has proved his case about change of user and ultimately, the Trial Court decreed the suit in favour of the plaintiff. Being aggrieved by the aforesaid decree for possession, the petitioner preferred an Appeal before the Division Bench of Small Causes Court, Ahmedabad, being Civil Misc. Appeal No.13 of 2003. At the admission stage, the Appellate Court heard the matter at length. After going through the record of the case and after hearing the arguments of the advocate for the appellant, the Appellate Court came to the conclusion that the respondent-plaintiff has proved his case about change of user as defendant has changed the use of the premises from residential to business, it also came to the conclusion that the suit premises was let out for the purpose of residence and the defendant has changed the user of the said premises. It has been observed in Para 20 and 22 by the Appellate Court as under:-

"20. The xerox copy of the Rent Note is Exh.56, Mark 26/1. It is dated 18.10.1966. It is executed by Choksi Ramanlal Atmaram & Co. and signed by Ramanlal Atmaram Modi as a partner. As per this Rent Note, the premises is given to the said tenant situated on the ground floor bearing M.C.No.1986 and it is specifically stated on Page 2 that it is rented for the residence of Company's employees. For the reasons already

discussed above, there is no specific challenge of the purpose of letting and the execution of this Rent Note and, therefore, considering this evidence and the conduct of the defendant, there cannot be any hesitation that the suit-premises was let only for the purpose of residence of the employees of the defendant-company.

22. On the other hand, the very argument of the learned advocate Mr.Bhatt is that it is being used as a shop. What he wants to submit is that it is used continuously within the knowledge of landlord prior to 1995 when the present plaintiff became exclusive owner. This argument has no merits, but by a necessary assertion, it proves that the suit-premises is used for shop. Once it is proved on record that the suit-premises was rented for residence of defendant's employees, whereas a matter of fact, the defendant is using the suit-premises as a shop, there is a clear change of user. Under these circumstances, the finding of the learned trial Judge of issue no.1 in the affirmative upholding the purpose of lease as residence for defendant's employees is duly proved and there is no error and similarly, the finding of issue no.2 in the affirmative upholding the change of user from residence to non-residence is equally proved and there is no error in the finding of the learned trial Judge."

2. Mr.Gandhi, Learned Advocate for the petitioner, is not in a position to point out as to how the finding of fact recorded by the Court below is erroneous in any manner. This Court in a revision under Section 29(2) of the Bombay Rent Act, cannot reappraise the evidence on record. In my view, it cannot be said that the Appellate Court has committed any error of law in decreeing the suit of the plaintiff on the ground of change of user. At this stage, Mr.Soni submitted that the original tenant has already left India and he has settled in America. In order to substantiate his say, he stated that even the affidavit below the revision application is sworn by the Power of Attorney holder of the tenant and he has submitted that, now, the tenant is not residing in India and even on that ground, the order of the Appellate Court is required to be confirmed. However, since the suit is not filed on the aforesaid grounds, it is not possible for this Court to take into account the aforesaid aspect while deciding this revision application. It is, no doubt, true that even in the cause title of the revision, the name of the tenant is shown but the affidavit is

filed by the Power of Attorney holder and not by the tenant. Still, I would not like to take the aforesaid aspect into account, as, this point is not canvassed or raised before the Courts below. So far as the present revision is concerned, I do not find any substance. This Civil Revision Application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No costs.

3. Mr.Gandhi, Learned Advocate requested that the interim relief may be continued for some time as the petitioner may like to approach the Supreme Court against the impugned order. since the interim relief is granted by this Court earlier, the same is ordered to be extended upto 30.6.2004.

(P.B.Majmudar, J)

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